

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1022**

Introduced by Jones, 43

Read first time January 12, 2004

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Motor Vehicle Operator's License Act; to  
2 amend sections 60-4,120.01 and 60-4,120.02, Revised  
3 Statutes Supplement, 2002, and sections 60-462 and  
4 60-4,112, Revised Statutes Supplement, 2003; to change  
5 provisional operator's permit restrictions; to prohibit  
6 the use of a mobile telephone for holders of provisional  
7 operator's, LPD-learner's, and school permits as  
8 prescribed; to provide a penalty; to harmonize  
9 provisions; and to repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 60-462, Revised Statutes Supplement,  
2 2003, is amended to read:

3           60-462. Sections 60-462 to 60-4,188 and section 5 of  
4 this act shall be known and may be cited as the Motor Vehicle  
5 Operator's License Act.

6           Sec. 2. Section 60-4,112, Revised Statutes Supplement,  
7 2003, is amended to read:

8           60-4,112. Sections 60-4,113 to 60-4,130.05 and section 5  
9 of this act shall apply to the operation of any motor vehicle  
10 except a commercial motor vehicle.

11           Sec. 3. Section 60-4,120.01, Revised Statutes  
12 Supplement, 2002, is amended to read:

13           60-4,120.01. (1) Any person who is at least sixteen  
14 years of age but less than eighteen years of age may be issued a  
15 provisional operator's permit by the Department of Motor Vehicles.  
16 The provisional operator's permit shall expire on the applicant's  
17 eighteenth birthday. The requirements for the provisional  
18 operator's permit prescribed in subdivisions (2)(a) and (b) of this  
19 section may be completed prior to the applicant's sixteenth  
20 birthday. A person may apply for a provisional operator's permit  
21 and take the driving test and the written examination, if required,  
22 at any time within sixty days prior to his or her sixteenth  
23 birthday upon proof of age in the manner provided in section  
24 60-484.

25           (2) In order to obtain a provisional operator's permit,  
26 the applicant shall present to the examiner (a)(i) proof of  
27 successful completion of a department-approved driver safety course  
28 which includes behind-the-wheel driving specifically emphasizing

1 (A) the effects of the consumption of alcohol on a person operating  
2 a motor vehicle, (B) occupant protection systems, (C) risk  
3 assessment, and (D) railroad crossing safety and (ii) proof of  
4 successful completion of a written examination and driving test  
5 administered by a driver safety course instructor or (b) a  
6 certificate in a form prescribed by the department, signed by a  
7 parent, guardian, or licensed driver at least twenty-one years of  
8 age, verifying that the applicant has completed fifty hours of  
9 lawful motor vehicle operation, under conditions that reflect  
10 department-approved driver safety course curriculum, with a parent,  
11 guardian, or adult at least twenty-one years of age, who has a  
12 current Nebraska operator's license or who is licensed in another  
13 state. If the applicant presents such a certificate, the applicant  
14 shall be required to successfully complete a driving test  
15 administered by an examiner of the department. The written  
16 examination shall be waived if the applicant surrenders a Nebraska  
17 LPD-learner's permit issued after January 1, 1999, and such permit  
18 is valid or has expired no more than one year prior to surrender.  
19 However, the department shall not waive the written examination if  
20 the provisional operator's permit being applied for contains a  
21 class or endorsement which is different from the class or  
22 endorsement of the LPD-learner's permit. Upon presentation to the  
23 examiner by the applicant of a form prescribed by the department  
24 showing successful completion of the driver safety course, the  
25 examiner shall waive the written examination and driving test.  
26 Upon presentation to the examiner of the certificate, the examiner  
27 shall waive the written examination but not the driving test. The  
28 examiner shall waive the written examination and the driving test

1 if the applicant has been issued a school permit and such permit is  
2 valid or has expired no more than one year prior to application.  
3 The written examination shall not be waived if the provisional  
4 operator's permit being applied for contains a class or endorsement  
5 which is different from the class or endorsement of the school  
6 permit.

7 (3) The holder of a provisional operator's permit shall  
8 only operate a motor vehicle on the highways of this state during  
9 the period beginning at 6 a.m. and ending at 12 midnight except  
10 when he or she is en route to or from his or her residence to his  
11 or her place of employment or a school activity. The holder of a  
12 provisional operator's permit may operate a motor vehicle on the  
13 highways of this state at any hour of the day or night if  
14 accompanied by a parent, guardian, or adult at least twenty-one  
15 years of age, who has a current Nebraska operator's license or who  
16 is licensed in another state The holder of a provisional operator's  
17 permit is authorized to operate a motor vehicle on the highways of  
18 this state only (a) during the period beginning at 6 a.m. and  
19 ending at 12 midnight, (b) when he or she is en route to or from  
20 his or her residence to his or her place of employment or a school  
21 activity, or (c) at any hour of the day or night if accompanied by  
22 a parent, guardian, or adult at least twenty-one years of age, who  
23 has a current Nebraska operator's license or who is licensed in  
24 another state.

25 (4) The county treasurer shall collect the fee prescribed  
26 in section 60-4,115 for the issuance of each provisional operator's  
27 permit.

28 Sec. 4. Section 60-4,120.02, Revised Statutes

1 Supplement, 2002, is amended to read:

2           ~~60-4,120.02.~~ (1) Any person convicted of violating a  
3 provisional operator's permit issued pursuant to section  
4 60-4,120.01 by operating a motor vehicle in violation of subsection  
5 (3) of such section shall be guilty of an infraction and may have  
6 his or her provisional operator's permit revoked by the court  
7 pursuant to section 60-496 for a time period specified by the  
8 court. Before such person applies for another provisional  
9 operator's permit, he or she shall pay a reinstatement fee as  
10 provided in section 60-499.01 after the period of revocation has  
11 expired.

12           (2) A copy of an abstract of the court's conviction,  
13 including an adjudication, shall be transmitted to the director  
14 pursuant to sections 60-497.01 to 60-497.04.

15           (3) For purposes of this section, conviction includes any  
16 adjudication of a juvenile.

17           Sec. 5. (1) (a) Except as otherwise provided in this  
18 section, the holder of a provisional operator's permit,  
19 LPD-learner's permit, or school permit operating a motor vehicle  
20 upon the highways of this state shall not engage in a call while  
21 such motor vehicle is in motion.

22           (b) A holder of a provisional operator's permit,  
23 LPD-learner's permit, or school permit operating a motor vehicle  
24 upon the highways of this state who holds a mobile telephone to, or  
25 in the immediate proximity of, his or her ear while such motor  
26 vehicle is in motion is presumed to be engaging in a call within  
27 the meaning of this section. The presumption established by this  
28 subdivision is rebuttable by evidence tending to show that the

1 permitholder was not engaged in a call.

2 (2) Subdivision (1) of this subsection does not apply to:

3 (a) The use of a mobile telephone for the sole purpose of  
4 communicating with an emergency service agency as defined in  
5 section 71-7102, a health care facility as defined in section  
6 71-413, or a physician's office regarding an emergency or serious  
7 health matter; or

8 (b) The use of a hands-free mobile telephone.

9 (3) This subsection shall not be construed as authorizing  
10 the seizure or forfeiture of a mobile telephone unless otherwise  
11 provided by law.

12 (4) A holder of a provisional operator's permit,  
13 LPD-learner's permit, or school permit convicted of violating this  
14 section shall be fined at least fifty dollars and not more than one  
15 hundred dollars.

16 (5) For purposes of this section:

17 (a) Engage in a call means talking into or listening on a  
18 hand-held mobile telephone but does not include holding a mobile  
19 telephone to activate, deactivate, or initiate a function of such  
20 mobile telephone;

21 (b) Hand-held mobile telephone means a mobile telephone  
22 with which a user engages in a call using at least one hand;

23 (c) Hands-free mobile telephone means a mobile telephone  
24 that has an internal feature or function, or that is equipped with  
25 an attachment or addition whether or not permanently part of such  
26 mobile telephone, by which a user engages in a call without the use  
27 of either hand, whether or not the use of either hand is necessary  
28 to activate, deactivate, or initiate a function of such telephone;

1           (d) Immediate proximity means that distance which permits  
2     the user of a mobile telephone to hear telecommunications  
3     transmitted over such mobile telephone but does not require  
4     physical contact with such user's ear;

5           (e) Mobile telephone means the device used by subscribers  
6     and other users of wireless telephone service to access such  
7     service; and

8           (f) Wireless telephone service means two-way, real time  
9     voice telecommunications service that is interconnected to a public  
10    switched telephone network and is provided by a commercial mobile  
11    radio service as defined by 47 C.F.R. 20.3, as such regulation  
12    existed on the effective date of this act.

13           Sec. 6. Original sections 60-4,120.01 and 60-4,120.02,  
14    Revised Statutes Supplement, 2002, and sections 60-462 and  
15    60-4,112, Revised Statutes Supplement, 2003, are repealed.